

216

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26352-2017
Date of decision: 13.02.2024

PARTAP SINGH

...Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. K. S. Banyana, Advocate for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 03.10.2017 (Annexure P-4), vide which the claim of the petitioner for grant of regular pay scale of Executive Officer from 21.03.2002 to 31.05.2013 has been rejected without any reason and justification and further a writ in the nature of *mandamus* directing the respondents to grant regular pay scale of Executive Officer to the petitioner from 21.03.2002 to 31.05.2013 and further to revise the pension accordingly and arrears of the pay scale and pension be paid to the petitioner along with market rate of interest.

2. The brief facts of the present case are that the petitioner was appointed as Clerk in the Municipal Committee on 31.05.1977 and he was promoted as A-Class Secretary of Municipal Council on 10.05.1997. While the petitioner was working on the aforesaid post of A-Class Secretary, he was given

the charge of the post of Executive Officer of the Municipal Council in his own pay scale vide order dated 19.03.2002 (Annexure P-1). The post of Executive Officer is to be filled up by way of direct recruitment but in view of the fact that no person was available, the petitioner was granted the aforesaid charge of the post of Executive Officer on 19.03.2002. Thereafter, the petitioner continued to discharge his functions and exercise his powers of the post of Executive Officer till the time he attained the age of superannuation i.e. on 31.05.2013. The claim of the petitioner in the present writ petition is that for the time during which he discharged his duties of Executive Officer on the strength of the aforesaid order Annexure P-1, he be granted the salary and pay of that post. Learned counsel for the petitioner referred to a Full Bench judgment of this Court in **Subhash Chander versus State of Haryana and others, 2012 (1) SLR 207**; a judgment of Hon'ble Supreme Court in **Smt. P. Grover versus State of Haryana and another, (1983) 4 SCC 291** and judgments passed by a Coordinate Bench of this Court in **P. D. Kaushik versus State of Haryana and others, CWP-16541-2015** and **Nihal Singh versus State of Haryana and others, CWP-7642-2018** in this regard.

3. On the other hand, Mr. Gaurav Jindal, Addl. A.G., Haryana submitted that as per the order dated 19.03.2002 (Annexure P-1), the petitioner was to discharge the duties of Executive Officer in his own pay scale and therefore, he cannot be granted the salary and pay of that post. He further submitted that so far as the fact that the petitioner in pursuance of Annexure P-1 discharged the duties of Executive Officer from 21.03.2002 till the time of his retirement i.e. 31.05.2013 is concerned, the same is not in dispute. He also submitted that vide Annexure P-4, the claim of the petitioner was rejected on

the basis of instructions issued by the Chief Secretary, Government of Haryana dated 04.08.1998 because there was a delay in making a claim by the petitioner. He further submitted that there was a delay in filing of the present writ petition and on the ground of delay, no relief can be granted to the petitioner.

4. At this stage, learned counsel for the petitioner has supplied a copy of the instructions dated 04.08.1998 and while referring to the aforesaid instructions, he submitted that the aforesaid instructions are not applicable to the present case in view of the fact that those instructions were pertaining to a judgment passed by the Hon'ble Supreme Court pertaining to challenge to the seniority and consequent promotion and the issue of delay in that aspect was discussed. He further submitted that however in the present case, the claim of the petitioner is for grant of salary and pay for which delay cannot become a ground for non-suiting the petitioner since it is a recurring cause of action and pay and salary is a right to property under Article 300-A of the Constitution of India.

5. I have heard the learned counsel for the parties.

6. The only issue involved in the present case is as to whether the petitioner was entitled for his salary and pay from 21.03.2002 till 31.05.2013, i.e. the time during which he served and discharged the duties of Executive Officer in pursuance of the order passed in this regard vide Annexure P-1 by the Commissioner and Secretary to Government of Haryana, Urban Development Department. The law in this regard is also not *res integra*.

7. The Hon'ble Supreme Court in **Secretary-cum-Chief Engineer, Chandigarh versus Hari Om Sharma and others, (1998) 5 SCC 87** held as under:-

“7. Learned counsel for the appellant has placed reliance on Shreedaran Chandra Ghosh v. State of Assam & Ors. (1996) 10 SCC 567, as also on State of Haryana v. S.M. Sharma & Ors., JT 1993 (3) SC 740, to contend that since the respondent was promoted on the basis of stop-gap arrangement, he could not claim promotion as a matter of right nor could he claim salary for the post of Junior Engineer-I as he was given only current duty charge of the post. Both the contentions cannot be accepted. The Tribunal has already held that the respondent having been promoted as Junior Engineer I, though in stop-gap arrangement, was continued on that post, and therefore, he has a right to be considered for regular promotion. Having regard to the facts of this case, there is no reason to differ with the Tribunal.

8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him

on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.”

8. The Full Bench of this Court in **Subhash Chander’s case (supra)** also considered this issue and it was held that the person who is given a current duty charge is entitled for the pay and salary for the time he had discharged his duties.

9. The petitioner is not claiming any notional fixation of his salary for the purpose of his pensionary and retiral benefits but he is only claiming the salary for the time he discharged his duties as Executive Officer.

10. Consequently, considering the aforesaid factual position, the present writ petition is allowed. The impugned order dated 03.10.2017 (Annexure P-4) is hereby set aside. The respondents are directed to release the salary/pay to the petitioner for the time he discharged his duties as Executive Officer i.e. from 21.03.2002 to 31.05.2013, within a period of four months from today, along with interest @ 6% per annum.

13.02.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No